

Dear Honorable David Barlow:

Let me start off by apologizing and stating that I am sorry my client and I missed these two in-person status hearings that your court set. I knew nothing of these hearings and did not know of them being set until Friday the 17th of December. While it is true I still have a few questions, I am trying to get answers to, I will begin with the following: I had a vacation planned from November 29 thru December 13. A couple of days before I was to leave the court reset the sentencing from November 24 to December 2. So I took my laptop and made arraignments to make sure I had internet where I was going to be for the 1 and 2 of December. I believe the day I was leaving I received a phone call from a gentleman who said he was Mr. Reeves assistant. He went on to tell me they noticed a problem with the links they sent me for an exhibit that they had planned on using at the sentencing, he said it was a video. He wanted to make sure I could access it. I asked him what type of video, apparently he had not watched it, but it was a video of the riot in SLC. I told him I would check and see if I could access it and if not I would get back in touch with him. I asked him for his name and number before ending the conversation. On December 1, I drove into town to access the internet and I tried to connect to the links Mr. Reeves's assistant had given me. I accessed the links but they did not do anything. So I called up the individual who I had spoken with earlier and was able to reach him. I told him I was still having trouble accessing this info and I believe he then went and tracked down Mr. Reeves. I spoke with Mr. Reeves and I also asked him what was on the video. He also said he had not watched the video but attempted to give me a summation of what it included. Then he told me that he was going to be doing the sentencing and was not planning on using the video. By the end of the conversation I was not sure whether this video had already been provided to the court or not.

So after the court continued the sentencing on December 2, I did not have any computer access until I returned to the U.S. on the evening of December 13. On the morning of the 14th I had three pretrials from 8:30-10:30 after which I called Mr. Rojas and inquired if he had received any emails from the court. He said he had not. I checked my emails then and did not see any

emails from the court about this case. I talked to him again on Friday when the emails from the court all of a sudden appeared in my email. There was also an e-mail dated December 8, with a header that said Tracy/Michael that referenced this matter that I did not see until Friday, that I do not know when it showed up. It could have been in my e-mails and I may have missed that one, because of not recognizing the header. The message on my phone stated that I was out of the country until the 13 of December and I know Mr. Reeves and I thought Mr. Yeates was also aware I was out of town. On the day of sentencing, I had not been able to see this video I was concerned some statements I made to Mr. Reeves while not being completely informed about everything and I was concerned about going forward with the sentencing, but I did not say or do anything about it. I was obviously relieved when the court continued the sentencing. I was not ready and I was off my game. I really do not know why I was so far off my game that day. I spoke to Mr. Rojas about it as soon as the hearing was over. I apologized to him and told him there were some things that I should have said, that I did not, that I would correct this at the next sentencing. Mr. Rojas as usual was totally understanding. Again I am sorry for how this has turned out, I hope this explains what happened at least as far as missing these two hearings goes.

I would be happy to appear in person if the court has any other questions.

Thank you,

Frank A. Berardi